IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.25289 of 1997

Dated: February 14, 2007

Between:

Md. Ibrahim, S/o. Mohd. Yousuf, aged 62 years, H.No.3-6-199, Himayathnagar, Hyderabad.

... Petitioner

And

The Collector, Adilabad District, Andhra Pradesh, and others.

... Respondents

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 25289 of 1997

ORDER:

In this Writ Petition, the petitioner has questioned the validity of the order dated 07-09-1997 passed in Proceedings No.A/325/97 by the Mandal Revenue Officer, Kaddam Mandal, Adilabad District, in which, he has ordered for resumption of the land admeasuring Ac.30.00 acres covered by Sy. No. 277/1 of Bhuthkur village in Kaddam Mandal, in exercise of powers under the A.P. Assigned Lands (Prohibition of Transfers) Act 1977.

The father of the petitioner, by name, Md.Yousuf, was an

ex-serviceman of the Indian Army. On his application for grant of patta, the Government had permitted assignment to an extent of 60.00 acres of government land in Sy.No.277/1 situated at Bhutkur village vide order in Memo No.I-2-III/380/60-1, dated 21-12-1960. Pursuant to the said order of the Government, the Revenue divisional Officer, Nirmal, by proceedings No.G/3920/63, dated
6-6-1963 assigned the land in favour of the petitioner's father, subject to condition of paying an amount of Rs.3,000/- i.e. at the rate of Rs.50/- per acre, payable in 20 instalments, in terms of G.O.Ms.No. 1070, dated 20-06-1961. It is stated in the affidavit filed in support of the Writ Petition, that after the death of the petitioner's father, patta was transferred in favour of the petitioner and necessary changes were effected in the revenue records. It is further stated that out of the total extent of 60.00 acres of land, an extent of 30.00 acres was sold to one Sri Soma Ananthaiah and the remaining extent of 30.00 acres is in his possession. On the ground that the respondents were taking steps to dispossess him from the said land without due process of law, the petitioner, earlier, filed Writ Petition No. 11996 of 1996, and, the same was disposed of by the order dated 25-06-1996, with a direction, not to dispossess the petitioner from the land in question, without following due process of law.

Thereafter, on the ground that one Sri G.Narayana Reddy was in possession of the said land in contravention of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977, a show cause notice dated 26-02-1997 was issued to him in Form-I as per Rule 3 of the rules framed under the above said Act, to which, he appears to have filed reply stating that he is not concerned with the land in question. Based on the said show cause notice and the reply

thereto, impugned order of resumption of the land in question was passed, on the ground that possession of the said land by G.Narayana Reddy is in contravention of the provisions under the A.P. Assigned Lands (Prohibition of Transfers) Act 1977.

Impugned order of resumption of land is mainly questioned on the ground that the said order is passed without due notice and opportunity to the petitioner. Further, it is submitted that assignment of the said land was on payment of market value as per G.O.Ms. No.1070, dated 20-06-1961, and, as such, the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977 are not attracted. It is the case of the petitioner that the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977 can be made applicable only in the event of transfer of lands assigned to landless poor persons.

Counter affidavit is filed by the respondents, *inter alia* stating that the assignment was made on payment of market value in 20 equal installments as per G.O.Ms.No. 1070, dated 20-06-1961. It is stated that the land in question is in possession of one Sri G.Narayana Reddy, which is in contravention of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977. It is further submitted that though the assignment is in the name of Md.Yousuf, but however, the said Sri G.Narayana Reddy is in actual and physical possession of the same.

The impugned order of resumption of land in question was passed mainly on the ground that the said land was transferred and is in possession of one G.Narayana Reddy, in contravention of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977. The said Statute is designed to prevent transfer of assigned lands, which are assigned to landless poor persons. Even in the

statements of objects and reasons, it is stated that the said Legislation is intended to prevent transfer of assigned lands, which are assigned to landless poor persons. 'Assigned land' is defined under Section 2(1) of the Act, which reads as under:

> *" Assigned land means lands assigned by the Government to the landless poor persons under the rules for the time being in force subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings, and the word 'assigned; shall be construed accordingly".*

In this case it is not in dispute that assignment was made in favour of the father of the petitioner by collecting market value of Rs.50/- per acre in terms of G.O.Ms.No. 1070, dated 20-6-1961. In the said GO, Rules are framed for assignment of land in the project affected areas in exercise of powers under Section 172 of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli. As per the said rules, lands assigned can be resumed in the event of their requirement only for the purpose of project works. The conditions, which are made applicable to the assignment of lands to the landless poor persons, are not the same conditions for assignment of the lands covered by A.P. Project Affected Assignment Rules, 1961. As it is stated in the counter affidavit that assignment of the land in question was initially made to the petitioner's father by collecting market value of Rs.3000/- as per the Rules framed in G.O.Ms.No.1070, dated20-06-1961, it is clear that the assignment of the land to the late father of the petitioner was not on the ground that he was a landless poor person, within the meaning of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977. Moreover, as assignment was made in favor of the father of the petitioner, and, after the demise of the petitioner's father, the petitioner's name reflected in all the revenue records, the respondents ought not to have passed any

order for eviction unless the petitioner was also given prior notice and opportunity of being heard.

As much as assignment was made to the late father of the petitioner by collecting market value as per G.O.Ms.No. 1070, dated 20-6-1961, assignment cannot be said to be to a landless poor person within the meaning of A.P. Assigned Lands (Prohibition of Transfers) Act 1977, and, therefore, the respondent is not having any authority to pass the order for resumption of the land under the scheme of the said Act. Though it is the case of the respondents that assignment itself was a benami and the land is not in occupation of the petitioner, but however, the same is also no ground to sustain the impugned order. In that view of the matter, as the very invocation of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977 is without jurisdiction, I allow the Writ Petition and set aside the order dated 07-09-1997 passed in Proceedings No.A/325/97, by the Mandal Revenue Officer, Kaddam Mandal, Adilabad District.

The Writ petition is accordingly allowed, to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 14-02-2007
Mrr/Msnr.